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Wednesday, December 12, 2001
UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In re

JOSEPH and DORIS KANE,

No. 01-11503

[Debtor](#)  (s).

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ELIZABETH MARIE HARWOOD,

[Plaintiff](#)  (s),

v.

A.P. No. 01-1095

JOSEPH and DORIS KANE,

[Defendant](#)  (s).

Memorandum of Decision

Plaintiff Elizabeth Harwood is the 93-year-old mother of debtor and defendant Doris Kane. In this [adversary proceeding](#), brought by Elizabeth's guardian ad litem, she seeks determination that she has a [claim](#) against the Kanes for about \$290,000.00 and that the claim is nondischargeable. Whether couched as elder abuse, financial abuse, undue influence, defalcation, embezzlement, fraud or conversion, the crux of Elizabeth's claims is that the Kanes wrongfully obtained her money. However, the evidence established no wrongdoing on the part of the Kanes. It appeared to the court that their conduct has always been honest and caring. Elizabeth lived in a senior apartment very near the Kanes from 1989 to 1995, enjoying a great deal of daily care and attention from Doris and avoiding having to live in a nursing home. In 1995, after she suffered a stroke, she agreed with Doris that the Kanes would take her in and care for her in return for some financial help. This was no light undertaking on Doris' part. Her mother was legally blind, was beginning to suffer the initial symptoms of Alzheimer's Disease, and had a personality order which could make her very difficult to live with. She was very demanding and needed constant help and attention.

On the other hand, Elizabeth was very generous and giving with Doris. Elizabeth had one other daughter from whom she was estranged. Elizabeth, with no encouragement or participation by Doris, had made a will which left everything to Doris. Elizabeth felt that as long as Doris was caring for her she should have free access to her money, which was to be Doris' anyway under the will. She fully understood the periodic financial problems Doris and her husband suffered, and was glad to have her money used by the family. In August of 1998, due her increasing senility and her personality order,⁽¹⁾ Elizabeth became temporarily convinced that the Kanes had cheated her out of some of her money.⁽²⁾ Her estranged daughter and that daughter's son, Don May, appear to have had a hand in this turn of events. To their credit, the Kanes never wavered from their concern or care for Elizabeth and took her back in to live with them even while litigation in her name continued against them.

The evidence was compelling that the Kanes have always acted properly in their relations with Elizabeth. They have always acted towards her with love and devotion and not the avarice alleged in the complaint. There is no doubt in the court's mind that Elizabeth intended the Kanes to have the money they received from her and that, to the best of her diminished abilities, she was grateful to the Kanes for taking her into their home and caring for her. For the foregoing reasons, plaintiff will take nothing by her complaint which will be dismissed with prejudice. The Kanes shall recover their costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the Kanes shall submit an appropriate form of judgment forthwith.

Dated: December 12, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. The testimony of all witnesses was completely consistent with two psychiatric evaluations of Elizabeth, by two different doctors, which found that Elizabeth suffered from a personality

disorder which caused her to insist, with complete conviction, upon facts which were not true. Elizabeth's estranged daughter was probably a victim of this disorder when she was disinherited. The disorder is undoubtedly the source of Elizabeth's accusations against the Kanes.

2. Even at the worst of times, Elizabeth acknowledged considerable loans and gifts to Doris. Even if the court had found wrongdoing, the damages would be far less than the amount al

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